

City of San Diego  
**MEMORANDUM**

DATE: January 7, 2009  
TO: CITY ATTORNEY – Brant Will  
FROM: Office of the City Clerk – Mary Zumaya  
SUBJECT: Item 330 of the Tuesday, January 6, 2009, City Council Meeting

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ITEM-330: Continued Retention of Hawkins Delafield & Wood LLP as City General Disclosure Counsel.

**CITY ATTORNEY'S RECOMMENDATION:**

Introduce the following ordinance:

(O-2009-80)

Introduction of an Ordinance authorizing the Mayor, or his designee, to execute, for and on behalf of the City of San Diego, an Agreement with Hawkins Delafield and Wood LLP for continued retention as City General Disclosure Counsel;

Declaring that in accordance with Charter Section 99, this contract may extend beyond five years;

Authorizing the City Comptroller to expend up to an additional \$180,000 for General Disclosure Counsel Services allocated on an FTE basis.

**NOTE: 6 votes required pursuant to Section 99 of the City Charter.**

**SUPPORTING INFORMATION:**

Vinson & Elkin LLP recommended in their Report entitled "The City of San Diego, California's Disclosures of Obligation to Fund the San Diego City Employees' Retirement System and Related Disclosure Practices 1996-2004 with Recommended Changes to the Municipal Code" dated September 16, 2004 (Report), that the City retain a law firm to serve as the City's general disclosure counsel in order to provide for "continuity in the City's disclosure materials and a greater accountability on the part of disclosure counsel."

In November 11, 2004, the City Council adopted Ordinance Number O-19320, which added Chapter 2, Article 2, Division 41, Securities Disclosure, to the San Diego Municipal Code.

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In March 2004, the City retained the law firm of Hawkins, Delafield & Wood LLP (Hawkins) to serve as the City's general disclosure counsel. In that capacity, Hawkins has provided expert securities law advice to City staff regarding the requirements of securities laws for private placements and public offerings, continuing disclosure agreements and other disclosure matters. In addition, Hawkins has facilitated the training of City officials and staff with regard to the requirements of the federal securities laws.

Finally, Hawkins also participates as a non-voting member of the Disclosure Practice Working Group under the requirements of San Diego Municipal Code, Chapter 2, Article 2, Division 41, as amended.

In April 2008, the Office of the City Attorney sent a Request for Qualifications for Bond Counsel and General Disclosure Counsel Services to 50 national and local firms. Thirteen firms replied, were evaluated, and were placed on an eligibility list. Hawkins was selected as the firm most knowledgeable and appropriate given the needs of the City to be the City's General Disclosure Counsel.

Hawkins was first retained in March 2004 and three amendments (see Previous Council and/or Committee Action below) have been made to the contract. Charter Section 99 requires that contracts extending beyond a period of five years must be authorized by Ordinance adopted by a two-thirds' majority vote. We expect that Hawkins will provide services exceeding five years. Therefore, we are requesting this continued retention be authorized by Ordinance.

**FISCAL CONSIDERATIONS:**

The City shall continue to compensate Hawkins Delafield & Wood LLP based on its hourly rates for disclosure counsel services. This continued retention authorizes an additional \$180,000, for a cumulative amount of \$1,430,000. As with previous authorizations, the amount will be allocated on a FTE basis approximately 75% to the General Fund and approximately 25% across the Enterprise Funds.

As of November 6, 2008, there are no outstanding invoices for Hawkins and remaining authorized funding is \$44,695. The November invoice for October services is expected to be in the \$20,000 range.

**PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:**

The original contract was on a City Manager Action for \$100,000 (Contract Number C-12680, dated May 18, 2004, as filed in the Office of the City Clerk, AC #2401075).

The first amendment was also on a City Manager Action for \$150,000 (Contract Number C-13096, dated December 3, 2004, as filed in the Office of the City Clerk, AC # 2500533).

The second amendment for continued retention authorized an additional \$500,000 and was adopted by the City Council on March 8, 2005, as Resolution Number R-300206 (AC #2500806) on a 7-0 unanimous vote, with Councilmember Young absent.

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The third amendment for continued retention authorized an additional \$500,000 and was adopted by the City Council on December 4, 2007, as Ordinance Number O-19695 (AC #2800285) on a 6-1 vote, with Councilmember Hueso voting "No" and Councilmember Maienschein absent.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Hawkins, Delafield & Wood LLP  
All City Departments

Tomanek

Aud. Cert. 2900404.

**COUNCIL ACTION WAS:**

To Introduce the Ordinance with the provision that the 75%/25% split be used for any costs that cannot be allocated to a work order in support of one fund or the other and once the contract nears the expiration, the item of cost allocation should come back to the Budget Committee before an additional request for contract extension is made to the City Council.

**COUNCIL VOTE WAS:**

Passed 8 to 0. Motion by DeMaio, second by Frye.

**Please prepare the Ordinance to reflect Council's Action using the appropriate language, and return to the City Clerk's Office Attention: Magdalena Lujan or Lauren Yepiz, MS 2A to place on the January 20, 2009 docket for adoption.**

ELIZABETH S. MALAND  
City Clerk

By: Mary Zumaya, Deputy City Clerk

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01/20

THE CITY OF SAN DIEGO

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OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Date Issued: December 31, 2008

IBA Report Number: 08-125

City Council Docket Date: January 6, 2009

Item Number: # 330

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## Continued Retention of Hawkins Delafield & Wood LLP as City Disclosure Counsel

### OVERVIEW

On February 11, 2004, the City Council commissioned Vinson & Elkins LLP to review the City's disclosure practices from January 1996 through February 2004 and investigate whether the City failed to meet its disclosure obligations related to the funding of SDCERS. In their report to the City dated September 16, 2004, Vinson and Elkins recommended that the City retain a law firm to serve as the City's general disclosure counsel. In March 2004, the City selected the law firm of Hawkins, Delafield & Wood LLP (Hawkins) to serve as the City's general disclosure counsel.

The City Council is being asked to adopt an ordinance authorizing an additional \$180,000 to continue to retain Hawkins as the City's general disclosure counsel. This would be the fourth amendment to the original agreement with Hawkins that was executed on May 11, 2004. The IBA issued Report # 07-109 regarding the proposed third amendment to the agreement with Hawkins in November 2007. This report briefly reviews the history of the Hawkins contract, comments on the requested amendment and follows up on our previous recommendations.

### FISCAL/POLICY DISCUSSION

In their capacity as the City's general disclosure counsel, Hawkins provides:

- Expert securities law advice to City staff regarding the requirements of securities laws for City financings (private placements and public offerings), continuing disclosure agreements and other disclosure matters,



Office of Independent Budget Analyst

202 C Street, MS 3A • San Diego, CA 92101

Tel (619) 236-6555 Fax (619) 236-6556

- Training for elected officials and staff with regard to the requirements of federal securities laws, and
- Guidance and insights as a non-voting member of the Disclosure Practices Working Group (DPWG) as required by the Municipal Code (Chapter 2, Article 2, Division 41).

#### History of the Agreement with Hawkins

The City initiated an agreement (Agreement) with Hawkins “for legal services related to general disclosure and continuing disclosure matters” on May 11, 2004. The initial agreement was for an amount not to exceed \$100,000 and contained a broad 14-item scope of services section focusing on City disclosure matters. Citing a need for additional general disclosure counsel services from Hawkins, the City has subsequently amended the Agreement three times. The agreement history is provided below:

<u>Agreement</u>	<u>Date Executed</u>	<u>Amount</u>
Original	May 11, 2004	\$100,000
1 <sup>st</sup> Amendment	December 2, 2004	\$150,000
2 <sup>nd</sup> Amendment	March 8, 2005	\$500,000
3 <sup>rd</sup> Amendment	November 13, 2007	<u>\$500,000</u>
		\$1,250,000

#### Requested \$180,000 Extension of the Agreement

Based on workload expectations, the City Attorney’s Office expects that the additional \$180,000 requested for a fourth amendment to the Agreement will cover general disclosure counsel services for most of calendar 2009. In calendar 2008, invoices from Hawkins averaged approximately \$27,000 a month. If this trend were to continue, the IBA estimates an additional \$180,000 would roughly last until the end of FY 2009 which would require additional funding to be considered for FY 2010.

As noted in the staff report, the City’s financial departments recommend apportioning the additional \$180,000 cost based on a Full Time Equivalent (FTE) staffing methodology. This results in the General Fund bearing approximately 75% of the expense with the remaining 25% apportioned to the City’s various Enterprise Funds. The Financial Management Department utilized staffing levels in the FY 2009 budget to reevaluate FTE cost apportionment percentages and determine the 75%/25% split.

The Mayor proposed and the City Council adopted a Cost Allocation Policy on March 20, 2006. The Policy calls for a review of cost allocation parameters at least on a bi-annual basis, and any recommended changes to the policy shall be submitted to the City Council for approval. As it has been more than two years since adoption, the IBA recommends that the Policy be brought forward to the City Council for review and discussion.

In the FY 2009 budget, the IBA understands that some funding was budgeted for disclosure counsel in the General Fund (as a line item within Special Consulting Services within Citywide Program Expenditures); however, this money was subsequently redirected to cover other unanticipated consulting services. As it is uncertain what services were provided with the redirected funds, the City Council may wish to clarify how these funds were used.

As shown in the proposed cost apportionment that is attached to the staff report, approximately 75% of the \$180,000 (\$135,000) has been allocated to Citywide Program Expenditures within the General Fund. Table 1 on page 4 of the Mayor's FY 2009 Budget Amendment Report (#08-166) therefore has a corresponding line item of approximately \$130,000 for disclosure counsel services. This \$130,000 was included in the current year budget shortfall of \$43 million which was addressed with the November budget actions. The Financial Management department indicates that the expense to be apportioned to the City's Enterprise Funds (25% or approximately \$45,000) was not budgeted and will need to be absorbed within current year budgets.

#### Recommendations Made in IBA Report # 07-109

The IBA reviewed the request for a third amendment to the Agreement in November 2007. At that time, the IBA and the City Council were concerned that the Agreement had expired approximately two years earlier and that expenses had been authorized (invoices received, but not submitted for payment) well in excess of appropriated funds. The IBA recommended that "general disclosure counsel services should be thoughtfully contemplated on a regular basis and accounted for in the annual budget process so as not to unnecessarily deplete appropriated reserves."

The current Agreement is valid and approximately \$3,000 remains from the \$500,000 that was allocated in November 2007. It should be noted that the City Attorney's Office expects to receive an invoice in January 2009 from Hawkins for the month of December 2008 that will likely be in excess of the \$3,000 in remaining funds. Although approval is being sought just before existing funding runs out, the IBA continues to recommend that annual disclosure counsel expenses be better anticipated and budgeted for during the annual budget process.

As the City's general disclosure counsel work had not been competitively bid for a number of years, the IBA further recommended that "the City competitively bid disclosure counsel services well before this new Agreement expires." The Office of the City Attorney subsequently issued an Request for Qualifications (RFQ) for Bond Counsel and General Disclosure Counsel on May 16, 2008. In response to the RFQ, 10 of 13 proposals received expressed interest in providing general disclosure counsel services. Based on the City Attorney's Office evaluation of the proposals received, John McNally of Hawkins was selected as the best qualified individual/firm to provide general disclosure counsel services to the City.

## CONCLUSION

The IBA continues to believe that the City needs continued general disclosure counsel services. Based on the competitive selection process that was undertaken by the City Attorney's Office, we recommend that the ordinance authorizing the continued retention of Hawkins be approved. The General Fund portion of the additional \$180,000 expense (approximately \$130,000) was included in the projected current year budget shortfall of \$43 million which was addressed with the November 2008 budget actions.

We believe that the processes for anticipating and budgeting for general disclosure counsel expenditures can and should be improved so as not to 1) receive services that exceed appropriated funds and 2) result in the need for mid-year budget adjustments which can exacerbate mid-year budget deficits. The IBA commends the Office of the City Attorney for issuing a RFQ for general disclosure counsel services in May 2008, well before funding for the current Agreement expired.



Jeff Kavar  
Fiscal & Policy Analyst



APPROVED: Andrea Tevlin  
Independent Budget Analyst

Attachment: IBA Report # 07-109

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**OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT**

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Date Issued: November 9, 2007

IBA Report Number: 07-109

City Council Date: November 13, 2007

Item Number: 330

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## **Third Amendment to Disclosure Counsel Agreement**

### **OVERVIEW**

The City received a report on disclosure requirements from Vinson & Elkins LLP on September 16, 2004. The report recommended that the City retain a law firm to serve as the City's general disclosure counsel to provide continuity in the City's disclosure materials. In March 2004, the City selected the law firm of Hawkins, Delafield & Wood LLP (Hawkins) to serve as the City's general disclosure counsel.

The City Council is being asked to adopt an ordinance that will authorize an additional \$500,000 in a Third Amended and Restated Agreement with Hawkins. The Office of the City Attorney has provided an accompanying ordinance that would appropriate \$369,500 of the additional \$500,000 from the City's General Fund Unallocated (or Unappropriated) Reserve, with the remaining funds to be appropriated from City enterprise funds benefiting from general disclosure counsel services. This report briefly discusses the evolution of the contract and comments on the requested appropriation.

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### **FISCAL/POLICY DISCUSSION**

#### Evolution of the Agreement with Hawkins

The City initiated an agreement (Agreement) with Hawkins "for legal services related to general disclosure and continuing disclosure matters" on May 11, 2004. The initial agreement was for an amount not to exceed \$100,000 and contained a broad 14-item scope of services section focusing on City disclosure matters. Citing a need for



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additional general disclosure counsel services from Hawkins, the City executed a First Amendment to the Agreement with Hawkins on December 2, 2004, adding an additional \$150,000 to the Agreement. Each of the aforementioned agreements was processed at the request of the City Attorney by City Manager Action.

On March 8, 2005, the City Council approved Resolution R-300206, authorizing the City Manager to execute a Second Amended and Restated Agreement with Hawkins for general disclosure counsel services. This amendment increased the Agreement by another \$500,000. The specified term of the Second Amended Agreement was from April 1, 2004 through December 1, 2005.

The Office of the City Attorney is currently requesting that the City Council adopt an ordinance that would appropriate an additional \$500,000 for Hawkins and authorize a Third Amended and Restated Agreement. This amendment would bring the total authorized compensation for Hawkins to \$1,250,000 since the inception of the initial Agreement. There is no specified term for the proposed Third Amended Agreement and no discussion of the anticipated Agreement duration in the staff report.

In discussing the need for the proposed Third Amended Agreement, the Office of the City Attorney has informed the IBA that additional general disclosure counsel services are required and previously appropriated funds for the Agreement have been exhausted. The Second Amended and Restated Agreement expired on December 1, 2005. Additionally, the IBA has been informed that the City Attorney has been unable to pay approximately \$158,000 worth of invoices dating back to 2006.

#### Requested Reserve Fund Appropriation

The City Council is being asked to authorize an ordinance that would appropriate \$369,500 of the additional \$500,000 for the proposed Third Amended Agreement from the City's General Fund Unappropriated Reserve. The IBA believes such an appropriation will require an amendment to the Appropriation Ordinance before funds can be withdrawn from the Unappropriated Reserve. We recommend that such an appropriation is better made from the Appropriated Reserve specifically established for ~~unanticipated annual expenses (by Item 52 on November 13<sup>th</sup> docket, if approved).~~

The IBA has shared this recommendation with the Office of the City Attorney and suggested that they consider developing a resolution that would alternatively authorize the requested appropriation from the Appropriated Reserve. The Office of the City Attorney has indicated that they will develop such a resolution. If the City Council decides to authorize the Third Amended Agreement, the IBA recommends the City Council adopt the resolution brought forward by the Office of the City Attorney to facilitate an appropriation from the Appropriated Reserve.

## CONCLUSION

The IBA believes that the City needs continued general disclosure counsel services and that the requested Third Amended Agreement should be approved. We recommend that the Third Amended Agreement is appropriately funded from the Appropriated Reserve that has been established for unanticipated annual expenses. The IBA is concerned, however, that such an important contract has been allowed to expire for an extended period of time (since December 2005) and that services have been received in excess of appropriated funds.

In the future, general disclosure counsel services should be thoughtfully contemplated on a regular basis and accounted for in the annual budget process so as not to unnecessarily deplete appropriated reserves. The IBA understands that disclosure counsel services will occasionally be unanticipated; however, in this instance, the Agreement has been long expired and services have been rendered well beyond appropriated levels. If the Third Amended Agreement is approved, we recommend that invoices be immediately brought current and the City Council be periodically apprised of the status of the Disclosure Counsel Agreement going forward. Finally, the IBA recommends that the City competitively bid disclosure counsel services well before this new Agreement expires.

[SIGNED]

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Jeff Kavar  
Fiscal & Policy Analyst

[SIGNED]

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APPROVED: Andrea Tevlin  
Independent Budget Analyst

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REQUEST FOR COUNCIL ACTION  
CITY OF SAN DIEGO1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE ONLY)

2900404

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TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):  
CITY ATTORNEY

3. DATE: November 6, 2008 01/20

## 4. SUBJECT:

Continued Retention Of Hawkins Delafield &amp; Wood LLP As City General Disclosure Counsel

5. PRIMARY CONTACT (NAME, PHONE, &amp; MAIL STA.)

Brant Will - 533-5684 MS 59

6. SECONDARY CONTACT (NAME, PHONE, &amp; MAIL STA.)

Larry Tomanek - 533-5878 MS59

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



## 8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	See Attached Allocation				9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					\$180,000 to be allocated on a FTE basis, approximately 75% General Fund; approximately 25% Enterprise Funds.
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT	\$180,000				

## 10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	CITY ATTORNEY	11/4/08	8	CFO, IF REQUIRED	MARY LEWIS	11/20/08
2	LIAISON OFFICE	ED PLANK	11/12/08	9	COO, IF REQUIRED	JAY GOLDSTONE	11/25/08
3	FIN MGMT	Jared Tysell	11/14/08	10			
4	COMPTROLLER	Jessica Olson	11/19/08	11	CITY ATTORNEY	LARRY TOMANEK	11/25/08
5	DEPT MGMT.	William Tomanek	11/21/08		DOCKET COORD:	COUNCIL LIAISON	11/25/08
6					COUNCIL PRESIDENT		
7							

☐ SPOB ☐ CONSENT ☒ ADOPTION☐ REFER TO: COUNCIL DATE: 1/6/09

## 11. PREPARATION OF:

☐ RESOLUTIONS☒ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

1. An Ordinance authorizing the continued retention of Hawkins Delafield & Wood LLP as General Disclosure Counsel;
2. In accordance with Charter section 99, Council ordains that this contract may extend beyond five years;
3. Authorize the City Comptroller to expend up to an additional \$180,000 for services;
4. Authorize the City Comptroller to allocate the costs on an FTE basis with the General Fund portion from Citywide Program Expenditure (Dept 601).

## 11A. STAFF RECOMMENDATIONS:

APPROVE THE ORDINANCE

## 12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S):

COMMUNITY AREA(S):

ENVIRONMENTAL IMPACT: This activity is not a "project" and therefore exempt from CEQA pursuant to the State Guidelines Section 15060 (c) (3)

HOUSING IMPACT:

OTHER ISSUES:

000085

**EXECUTIVE SUMMARY SHEET**

**DATE ISSUED:** November 6, 2008

**REPORT NO.:**

**ORIGINATING DEPARTMENT:** City Attorney

**SUBJECT:** Continued Retention of Hawkins, Delafield & Wood LLP as City General Disclosure Counsel

**COUNCIL DISTRICT(S):** All

**CONTACT/PHONE NUMBER:** Brant Will, Deputy City Attorney 533-5684  
Larry Tomanek, Deputy Director, 533-5878

**REQUESTED ACTION:**

Approve continued retention of Hawkins, Delafield & Wood LLP, as City General Disclosure Counsel and authorize an additional \$180,000 to be allocated on a FTE basis.

**STAFF RECOMMENDATION:**

Approve the Ordinance.

**EXECUTIVE SUMMARY:**

Vinson & Elkin LLP recommended in their Report entitled "The City of San Diego, California's Disclosures of Obligation to Fund the San Diego City Employees' Retirement System and Related Disclosure Practices 1996-2004 with Recommended Changes to the Municipal Code" dated September 16, 2004 [Report], that the City retain a law firm to serve as the City's general disclosure counsel in order to provide for "continuity in the City's disclosure materials and a greater accountability on the part of disclosure counsel."

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In March 2004, the City retained the law firm of Hawkins, Delafield & Wood LLP [Hawkins] to serve as the City's general disclosure counsel. In that capacity, Hawkins has provided expert securities law advice to City staff regarding the requirements of securities laws for private placements and public offerings, continuing disclosure agreements and other disclosure matters. In addition, Hawkins has facilitated the training of City officials and staff with regard to the requirements of the federal securities laws. Finally, Hawkins also participates as a non-voting member of the Disclosure Practice Working Group under the requirements of San Diego Municipal Code, Chapter 2, Article 2, Division 41, as amended.

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Hawkins was first retained in March 2004 and three amendments (see Previous Council and/or Committee Action below) have been made to the contract. Charter section 99 requires that contracts extending beyond a period of five years must be authorized by Ordinance adopted by a two-thirds' majority vote. We expect that Hawkins will provide services exceeding five years. Therefore, we are requesting this continued retention be authorized by Ordinance.

**FISCAL CONSIDERATIONS:**

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As of November 6, 2008 there are no outstanding invoices for Hawkins and remaining authorized funding is \$44,695. The November invoice for October services is expected to be in the \$20,000 range.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:**

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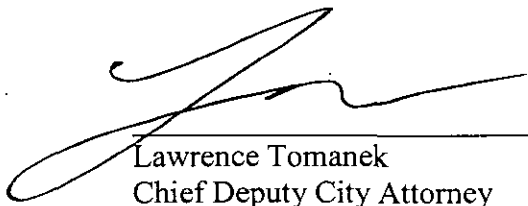
The third amendment for continued retention authorized an additional \$500,000 and was adopted by the City Council on December 4, 2007 as Ordinance Number O-19695 (AC # 2800285) on a 6-1 vote, with Councilmember Hueso voting "No" and Councilmember Maienschein absent.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

N/A

**KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):**

Hawkins, Delafield & Wood LLP., All City Departments.



Lawrence Tomanek  
Chief Deputy City Attorney

The City of San Diego  
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

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CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

AC 2900404

DEPT. NO. 100

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \_\_\_\_\_ Fund: \_\_\_\_\_

Purpose: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_ By: \_\_\_\_\_

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$180,000.00

Vendor: Hawkins Delafield & Wood LLP

Purpose: To continue retention of Hawkins Delafield & Wood LLP as city general disclosure counsel.

Date: November 19, 2008 By: Jessica Olson *Jessica A Olson*

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
SEE ATTACHED SHEET										\$180,000.00
TOTAL										\$180,000.00

Total Amount of AC/DP/Invoice:

\$ 180,000

Line	CY/PY	Fund	Dept	Department Name	Org	Account	Job Order	Amount
001	0	100	601	Citywide Program Expenditures	2450 ✓	4151 ✓	2450 ✓	135,414.00 ✓
013	0	41505 g.y.	776	MWWD-Administration	795 ✓	200 4151	776260 ✓	15,084.00 ✓
012	0	41500	760	Water	163 ✓	010 4151	163 ✓	13,968.00 ✓
017	0	41300	1300	Developmental Service Enterprise	1100 ✓	4151	1110 ✓	8,136.00 ✓
005	0	41200	752	Refuse Disposal	1000 ✓	100 4151	110 ✓	2,142.00 ✓
009	0	41210	757	Collection Services	020 ✓	4151	4229 ✓	1,890.00 ✓
002	0	41400	730	Golf Course	100 ✓	4151	2150 ✓	1,710.00 ✓
008	0	41210	755	Waste Reduction & Enforcement	1002 ✓	010 4151	1500 ✓	414.00 ✓
014	0	41100	720	Airports	2000 ✓	100 4151	1101 ✓	342.00 ✓
006	0	41200	753	Resource Management	010 ✓	4151	2000 ✓	324.00 ✓
011	0	41210	759	Resource Management	010 ✓	4151	2010 ✓	234.00 ✓
007	0	41200	754	Collection Services	020 ✓	4151	4229 ✓	162.00 ✓
003	0	41200	750	Environmental Protection	1001 ✓	010 4151	1002 ✓	126.00 ✓
010	0	41210	758	Environmental Protection	010 ✓	4151	1001 ✓	54.00 ✓
TOTAL								180,000

modify PO 5103959

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE TO APPROVE CONTINUED RETENTION  
OF HAWKINS, DELAFIELD & WOOD LLP AS CITY  
GENERAL DISCLOSURE COUNSEL AND AUTHORIZE  
ADDITIONAL FUNDS TO BE ALLOCATED ON A FTE BASIS

WHEREAS, Vinson & Elkin LLP recommended in their Report entitled "The City of San Diego, California's Disclosures of Obligation to Fund the San Diego City Employees' Retirement System and Related Disclosure Practices 1996-2004 with Recommended Changes to the Municipal Code" dated September 16, 2004 [Report], that the City retain a law firm to serve as the City's general disclosure counsel in order to provide for "continuity in the City's disclosure materials and a greater accountability on the part of disclosure counsel"; and

WHEREAS, in November 11, 2004, the City Council adopted Ordinance Number 19320, which added Chapter 2, Article 2, Division 41, Securities Disclosure, to the San Diego Municipal Code; and

WHEREAS, in March 2004, the City retained the law firm of Hawkins, Delafield & Wood LLP [Hawkins] to serve as the City's general disclosure counsel. In that capacity, Hawkins has provided expert securities law advice to City staff regarding the requirements of securities laws for private placements and public offerings, continuing disclosure agreements and other disclosure matters. In addition, Hawkins has facilitated the training of City officials and staff with regard to the requirements of the federal securities laws. Finally, Hawkins also participates as a non-voting member of the Disclosure Practice Working Group under the requirements of San Diego Municipal Code, Chapter 2, Article 2, Division 41, as amended.



WHEREAS, in April 2008, the Office of the City Attorney sent a Request for Qualifications for Bond Counsel and General Disclosure Counsel Services to 50 national and local firms. Thirteen firms replied, were evaluated, and were placed on an eligibility list. Hawkins was selected as the firm most knowledgeable and appropriate given the needs of the City to be the City's General Disclosure Counsel; and

WHEREAS, because Hawkins was first retained in March 2004 and three amendments have been made to the contract it is likely that the term of the contract will extend beyond a period of five years and Charter section 99 requires that contracts extending beyond a period of five years must be authorized by Ordinance adopted by a two-thirds' majority vote; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor or his designee is authorized to execute, for and on behalf of the City of San Diego, an agreement with Hawkins Delafield and Wood LLP.

Section 2. That the Comptroller is authorized to expend up to an additional \$180,000 for General Disclosure Counsel Services allocated on an FTE basis only to the extent that work may not be appropriately allocated specifically to the General Fund, one of the Enterprise Funds or to a particular bond finance project.

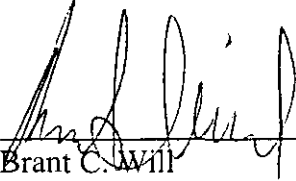
Section 3. That the Comptroller is authorized and directed to reallocate the funding sources among appropriate bond finance projects, as may be required based upon actual billings.

Section 4. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

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Section 5. That this ordinance shall take effect and be in force on the thirtieth day from  
and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By \_\_\_\_\_  
Brant C. Will  
Deputy City Attorney

LVT:ca:BCW:jdf  
11/25/2008  
01/06/2009.COR.Copy  
01/08/2009.REV  
Aud. Cert.: AC 2900404  
Or.Dept: City Attorney  
O-2009-80

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San  
Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor